U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAY 17 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Acting Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is an agri-business/ocean transport company. It seeks to permanently employ the beneficiary in the United States as an Internal Audit Supervisor (Caribbean & Latin America Operations) pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). This section of the Act provides for immigrant classification to members of the professions holding advanced degrees whose services are sought by employers in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The petitioner filed its Form I-140, Immigrant Petition for Alien Worker, on September 17, 2010. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed at the U.S. Department of Labor (DOL) on May 12, 2008, and certified by the DOL on July 26, 2010.

The Director denied the petition on August 26, 2011, finding that the beneficiary did not satisfy the minimum requirements on the ETA Form 9089 (labor certification) to qualify for the job offered.

The petitioner filed a timely appeal, supplemented by a brief from counsel and additional materials submitted in response to a Request for Evidence (RFE) issued by the AAO. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

To be eligible for approval as an advanced degree professional, the beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977). The priority date is the date the underlying labor certification application was received for processing by the DOL. For the instant petition, therefore, the priority date is May 12, 2008.

The minimum requirements for the proffered position are specified as follows on the ETA Form 9089, in Part H:

- Education: a bachelor's degree in accounting, or a foreign educational equivalent (boxes 4, 4-B, and 9).

- Experience: five years in the job offered (box 6).

- Specific skills or other requirements (box 14):

  "Certification as Certified Public Accountant (CPA), Certified Internal Auditor (CIA) or Certified Information Systems Auditor (CISA). Experience should include five years of auditing with accounting firm or, alternatively, three years prior auditing experience with publicly-traded corporation and two years being with accounting firm, working with application of foreign currency translation under SFAS 52, application of USGAAP standards to foreign based subsidiaries, filing requirements under Securities Exchange Commission (SEC) rules, audit requirements under Sarbanes-Oxley Act of 2002, and audit requirements under Foreign Corrupt Practices Acts (FCPA). Ability and willingness to travel internationally as much as 25% of annual work time."

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

As evidence of the beneficiary's educational credentials the record includes photocopies of the beneficiary's degree and associated documentation from the in Maracay, Venezuela, showing that the beneficiary was awarded a *Licenciado en Contaduria Publica* (licentiate degree of public accountant) on December 14, 1993. According to the Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a licenciate degree in Venezuela is awarded upon completion of a four- to five-year academic program and is comparable to a bachelor's degree in the U.S. Based on the foregoing information the AAO determines that the beneficiary's *Licenciado en Contaduria Publica* is more likely than not a foreign educational equivalent to a U.S. bachelor's degree in accounting. As such, it meets the educational requirement of the labor certification.

As evidence of the beneficiary's work experience the record includes letters from three prior employers who describe the beneficiary's duties as (1) an auditor and later supervising auditor for , a member of the accounting firm in Caracas, Venezuela, from August 1, 1994 to April 28, 2000; (2) a Senior Internal Auditor for in Maracay, Venezuela, from May 2000 to November 2001; and (3) a Senior Internal

Auditor for [redacted] in Cincinnati, Ohio, from November 2001 to May 2004. Based on these letters, which satisfy the substantive requirements of 8 C.F.R. § 204.5(g)(1), the AAO determines that the beneficiary has more than five years of post-baccalaureate experience as an accountant, in accordance with the requirement in Part H, box 6, of the labor certification.

With respect to the "other requirements" in Part H, box 14, of the labor certification, however, there is no evidence in the record that the beneficiary has been certified in the United States as either a Certified Public Accountant (CPA), a Certified Internal Auditor (CIA), or a Certified Information Systems Auditor (CISA). On appeal counsel claims that the ETA Form 9089 does not require that the beneficiary be certified in the United States. Counsel asserts that the beneficiary has the equivalent of certification because under Venezuelan law his *Licenciado* was coupled with the right to register as a public accountant with the appropriate state agency and practice the profession of accounting in Venezuela, which the beneficiary did.

To better ascertain the petitioner's intent with respect to its certification requirement during the labor certification process with the DOL, the AAO issued an RFE asking for all pertinent documentation including the recruitment materials for the proffered position. In response the petitioner submitted copies of its online and print advertisements for the job. Without exception, the advertisements read as follows with respect to the education and certification requirements:

> Bachelor's degree in accounting (or its U.S. equivalent) with certification as Certified Public Accountant (CPA), Certified Internal Auditor (CIA), or Certified Information Systems Auditor (CISA).

While the advertisements clearly indicate that U.S. or foreign accounting degrees are acceptable, no such alternative was presented with regard to the certification requirement. The advertisements specify a CPA, a CIA, or a CISA – all of which are U.S. certifications – with no indication that an equivalent foreign certification is acceptable. The certification language of the job advertisements is identical to the certification language on the ETA Form 9089 (Part H, box 14).

In accordance with the foregoing analysis, the AAO does not agree with counsel's claim that the labor certification does not require the beneficiary to be certified in the United States. The "plain language" of the ETA Form 9089, which is mirrored in the job advertisements, refutes that contention. *See Rosedale Linden Park Company v. Smith, id.* Since the beneficiary is not certified in the United States as either a CPA, a CIA, or a CISA, he does not meet all of the requirements in the labor certification to qualify for the proffered position. Therefore, the petition cannot be approved. The Director's decision will be affirmed, and the appeal dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.